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IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.1665/2007.

Smt.Suman
Vs.
State and ors.

Date of Order : 23/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Sumer Singh for the petitioner.
Shri B.K. Sharma Dy.GA for the State.

Reportable

BY THE COURT:-

Heard learned counsel for the parties.

2) Petitioner has challenged the order passed by the respondents dated 31/1/2007 by which the respondents have denied the request of the petitioner to send her to open air camp Sanganer.

3) Learned counsel for the petitioner submitted that decision not to send the petitioner to open air camp Sanganer has been taken by the District Advisory Committee on consideration of the fact that petitioner is native of Mandisor (Madhya Pradesh) and therefore according to Rule 3(a) of the Rajasthan Prisoners Open Air Camp Rules, 1972

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(for short, "Rules of 1972"), petitioner is not eligible to be transferred from Central Jail Jaipur to the open air camp Sanganer. It was argued that impugned-order has been mechanically passed without considering the fact that Rule 3 of the Rules of 1972 merely provides for guidelines and that too, to be applied ordinarily. Condition of Rule 3 need not be therefore applied to the case. The word "ordinarily" has been interpreted by the Division Bench of this Court in **Smt.Suman Vs. State and ors. (DBCWP No.5404/2005) decided on 19/9/2005** wherein it was held that there was no ban or bar for considering even those cases which fall within the categories of the said rule, to be sent to open air camp. Learned counsel for the petitioner also cited the judgment of the Division Bench of this Court in **Om Prakash Vs. State of Rajasthan : W.L.C. (Rajasthan) 2002(2) 491** in which similar condition contained in Rule 14 of the Rajasthan Prisoners (Release on Parole) Rules, 1958 which are in paramateria with the Rules of 1972 in the present case, was struck down as being violative of Articles 14 & 21 of the Constitution of India.

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4) Shri B.K. Sharma, learned Deputy Government Advocate has opposed the writ petition and argued that petitioner cannot be considered to be transferred to the open air camp because of the condition provided in Rule 3(a) of the Rules of 1972 being native of other State and the District Advisory Committee has rightly not considered the case of the petitioner in perspective of Rule 3(a) of the said Rules. Apart from the aforesaid decision, the District Advisory Committee also considered the conduct of the petitioner and therefore no interference is called for in the matter.

5) In rejoinder, learned counsel for petitioner submitted that the so-called misconduct on the part of the petitioner was nothing but a simple warning which was given to her on 15/4/2004.

6) Having heard learned counsel for the parties and perused the material on record, I find that the word "ordinarily" used in Rule 3(a) of the Rules of 1972 clearly indicates that the Committee in consideration of the case of prisoners for being sent to the open air camp need not

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necessarily reject all those cases which fall in any of the clauses (a) to (m) of Rule 3 of the Rules of 1972. Every matter has to be decided keeping in view the fact situation of that case, conduct and character of the prisoner, relevant criteria and decision has to be taken consistent therewith. Merely because ordinary place of residence of the prisoner is outside the State of Rajasthan, that would not create an absolute bar for consideration of his case for sending the prisoner to the open air camp. On this aspect, the the prisoner cannot be discriminated, as rightly held by the Division Bench of this Court in Om Prakash supra in which, while striking down Rule 14 (a) of the Rules of 1958, it was held as under:-

"The right to parole comes from humanitarian jurisprudence which is much above the Human Rights. Thus, in our view Rule 14 sub-rule(a) which prohibits release of a prisoner who is resident of outside the State of Rajasthan in comparison to local prisoners on parole makes a discrimination on the geographical ground and as such it is per se discriminatory. Thus, the Rule 14 sub-rule (a) only to the extent "Persons whose ordinary place of residence is outside the State of Rajasthan" is ultra vires of the Article 14

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and 21 of the Constitution of India. The authorities while considering the case of prisoner whose ordinary place of residence is outside the State of Rajasthan can enquire into the conduct of the convict more intensively but with the sense of urgency and within the stipulated period. Reasonable conditions can be imposed for the return of the convict to jail to serve out the remaining part of the sentence."

6) In the facts of the case therefore the matter requires re-consideration by the District Advisory Committee.

In the result, the writ petition is allowed and the impugned-order dated 31/1/2007 (Annexure-3) is set-aside and the matter is remanded back to the District Advisory Committee for re-considering the case of the petitioner in the light of her conduct as per clause 3(a) of the Rules of 1972. Necessary orders in this regard shall be passed within a period of one month from the date of receipt of certified copy of this order. A copy of this order be sent to the Superintendent Central Jail, Jaipur for necessary compliance.

(MOHAMMAD RAFIQ), J.

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